

Introduction

The Dairy Cattle Supply Lien law was created in 1987, and revised in 2012, to give feed suppliers enhanced rights to collection of the amounts owed for the feed provided to dairies. The law creates a statutory lien in favor of feed suppliers (called “Lien Claimants”) on the proceeds of the sale of milk or milk products (referred to as “Proceeds”), to secure amounts owed by a dairy (the “Lien Debtor”) for the purchase of feed or materials.

The Lien

The law creates a lien in favor of any person who provides feed or materials to aid the raising or maintaining of dairy cattle or offspring. The term “feed or materials” is defined broadly and includes commercial feed, grain, forage, feed ingredients, mineral feed, drugs, animal health products, customer-formula feed, any constituent nutrients of an animal ration, and generally any other food which is used for the feeding of dairy cattle.

The lien attaches to the proceeds from the sale of milk or milk products produced from dairy cattle consuming the feed provided by the Lien Claimant. Generally the proceeds of the sale of the milk will be owed by the creamery or “handler” to the Lien Debtor. In certain circumstances proceeds payable from the handler that purchases milk from the Lien Debtor will be payable directly to the Lien Debtor’s bank or other lender pursuant to a milk proceeds assignment. In such case, the lien may attach to identifiable proceeds while in the possession of the lender to the extent that the lender is obligated to remit some or all of the proceeds back to the Lien Debtor. The lien on the proceeds terminates when the proceeds are paid to the Lien Debtor and commingled with other funds of the Lien Debtor.

The Dairy Cattle Supply Lien secures the “reasonable or agreed charges for the feed or materials provided,” plus costs of enforcing the lien, up to the charges for feed provided within a 60-day period. However, only two feed suppliers (the first two to perfect their liens, as discussed below) can have an enforceable lien at any one time.

Creation and Perfection of the Lien

A Dairy Cattle Supply Lien arises upon the delivery of feed to a Lien Debtor, but the lien is only perfected, i.e., effective against competing creditors, when a Notice of Claim of Lien has been both filed with the Secretary of State and served on the Lien Debtor and certain other persons. The Notice of Claim of Lien is filed with the Secretary of State on the same form prescribed by the Secretary of State’s office for perfecting a personal property security interest. This form is commonly known as a UCC Financing Statement and can be currently found at http://www.sos.ca.gov/business/ucc/ra_9_ucc-1.pdf. The Dairy Cattle Supply Lien law requires certain additional information to be included in the Notice of Claim of Lien, including the name and address of the Lien Claimant and the Lien Debtor, the location of the dairy receiving the feed or materials, and that the Lien Claimant is claiming a dairy cattle supply lien.

Within 10 days of filing of the Notice of Claim of Lien with the Secretary of State, the Lien Claimant must serve the notice on the Lien Debtor and certain other persons, who are generally other creditors also secured by the milk proceeds. These creditors will generally be conventional production lenders as well as other feed and material suppliers, but may also include judgment creditors as well. To obtain a list of these other secured creditors of the Lien Debtor, the Lien Claimant will need to conduct a lien search of the records of the Secretary of State.

Duration of the Lien

Once a Notice of Claim of Lien is filed, the lien remains in effect as long as the Lien Claimant remains unpaid for the feed supplied or the Lien Claimant is paid, but continues to provide feed or materials to the Lien Debtor on a regular basis. The statute states that “providing feed or materials shall not be deemed to be made on a regular basis if a period of more than 30 days elapses between deliveries.” In general, this means that if a Lien Claimant is paid in full and commences further deliveries to the Lien Debtor after a lapse of 30 days, the Lien Claimant will need to file and serve another Notice of Claim of Lien.

Priorities Among Conflicting Creditors

As noted above, a Lien Debtor may be subject to numerous liens on its milk proceeds. The Dairy Cattle Supply Lien law provides that liens on the milk proceeds, whether created by consensual liens under the Commercial Code, judgment creditor claims, or Dairy Cattle Supply Liens, rank in priority by the time of perfection. Because perfection occurs by filing with the Secretary of State, the priority is essentially determined on a first to file basis.

Enforcement of the Lien

The 2012 revisions to the Dairy Cattle Supply Lien created a new method of enforcing the lien. Prior to the 2012 revisions, a Lien Claimant could enforce the lien only by filing an action against the Lien Debtor in the appropriate state or federal court. Under the 2012 revisions, the right to commence suit continues, but is supplemented by a non-judicial enforcement remedy.

Under the 2012 revisions, upon default by a Lien Debtor, a Lien Claimant may enforce its lien by notifying any “handler” obligated to the Lien Debtor on milk proceeds to pay the proceeds directly to the Lien Claimant. The non-judicial remedy provided by the 2012 revisions does not require commencement of any legal proceedings. Once the notice is provided, the handler is obligated to pay the proceeds to the Lien Claimant and not the Lien Debtor, subject to certain exceptions and limitations.

This non-judicial foreclosure remedy only applies to proceeds in the possession of a “handler”, as that term is defined in Food and Agricultural Code section 61826. It does not apply to the proceeds in the possession of any other persons, such as lenders or other secured parties.

The Lien Claimant may not demand that payment be made prior to 15 days following the date of the notice. This 15-day period presumably provides other parties with an opportunity to intervene if they claim priority in payment over the Lien Claimant.

After receiving an enforcement notice, the handler may continue to honor a prior milk proceeds assignment or to pay any lienholder with a lien prior to the lien asserted by the enforcing Lien Claimant.

Termination of the Lien

Once the amounts secured by the Dairy Cattle Supply Lien have been paid and the lien has terminated, the Lien Debtor is entitled to demand that the Lien Claimant formally terminate the lien. Within 20 days of receipt of such demand, the Lien Claimant is required to either file a termination statement with the Secretary of State, or send a termination statement directly to the Lien Debtor. The form of Termination Statement can currently be obtained at http://www.sos.ca.gov/business/ucc/ra_9_ucc-3.pdf.

Forms and Procedure

This brochure contains a procedural checklist and forms for use in perfecting, enforcing and terminating liens under the Dairy Cattle Supply Lien law. The following documents are contained in this brochure.

1. Perfection and Enforcement Checklist
2. Lien Perfection and Enforcement Information Sheet
3. UCC-1 Notice of Claim of Lien, with suggested language (for filing with Secretary of State.)
4. Notice of Claim of Lien (for service on Customer, Secured Parties and Other Required Parties.)
5. Notice to Make Payment Directly to Dairy Cattle Supply Lien Claimant
6. UCC-3 Termination Statement
7. The Dairy Lien Law (Cal. Food & Ag. Code sections 57401-57414)